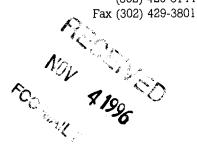
Delmarva Power

Joanne M. Scanlon

800 King Street • P.O. Box 231 Wilmington, DE 19899 (302) 429-3144 Fax (302) 429-3801

November 1, 1996



VIA AIRBORNE EXPRESS

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re:

Request for Clarification and Reconsideration

CC Docket No. 96-166

Dear Sir or Madam:

Enclosed please find an original and thirteen (13) copies of Delmarva Power & Light Company's Reply to the Opposition of the Association for Local Telecommunications Services in CC Docket No. 96-166.

Also enclosed is a stamped self-addressed envelope for return of a date-stamped copy of this filing to me.

Very truly yours,

Toanne M. Scanlon

Enclosures

No. of Copies rec'd Ob12
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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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Commission's Rules Governing Pole)	
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DELMARVA POWER & LIGHT COMPANY'S REPLY TO THE OPPOSITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Dale G. Stoodley
Joanne M. Scanlon
Delmarva Power & Light Company
800 King Street, P.O. Box 231
Wilmington, Delaware 19899-0231

A.

November 1, 1996

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
Implementation of Section 703	\
of the Telecommunications Act	,
of 1996	Ś
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Attachments)

DELMARVA POWER & LIGHT COMPANY'S REPLY TO THE OPPOSITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

On September 18, 1996, Delmarva Power & Light Company filed a Request for Clarification and Reconsideration in the above-captioned docket. Delmarva requested that the Commission clarify the definition of the term "utility" in amended Section 224(a) of the Communications Act, 47 U.S.C. § 224(a) and the Commission's regulations, 47 C.F.R. § 1.1402(a). To Delmarva's knowledge, only one opposition to Delmarva's request has been filed with the Commission. In accordance with the Commission's regulations, 47 C.F.R. § 1.429(g), Delmarva presents this reply to the Opposition of the Association For Local Telecommunications Services ("ALTS") to Delmarva's Request for Clarification and Reconsideration.

REPLY

Under the statute and the Commission's regulations, utility is defined as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns

or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a); 47 C.F.R. § 1.1402(a). In its Request for Clarification, Delmarva noted that this definition could be interpreted, in conjunction with the nondiscriminatory access provisions of Section 224(f)(1), to require a utility to allow a cable television system or a provider of telecommunications service to access a utility's right-of-way, even if undeveloped, simply because the utility may own poles with wire communications attachments somewhere in the system. Delmarva requested that the Commission make clear that the definition of utility was not intended to require an electric utility to create an infrastructure by installing poles or conduits on bare or unimproved rights-of-way so that cable and telecommunications providers will have something to which they can attach their own equipment.

In its opposition to Delmarva's petition, ALTS argues that Delmarva's request "is, in effect a request that the Commission rewrite the statute." Opposition at [2]-3. To the contrary, Delmarva is not suggesting that the Commission alter the statute. Delmarva simply sought clarification from the Commission regarding a defined term, which if interpreted broadly could require an electric utility to create infrastructure for the use of another entity where infrastructure does not exist, and for which the utility has no need.

Delmarva has more than 7,100 distribution poleline miles of overhead lines and has entered into numerous agreements which establish the terms and conditions under which cable television and telecommunications providers may attach equipment to Delmarva's poles. These pole attachments make use of existing infrastructure. Delmarva sought clarification from the Commission that where such infrastructure does not exist on a utility's right-of-way, the utility is not required to create such infrastructure for the benefit of a telecommunications or cable

provider. Delmarva reiterates its belief that such a result could not have been the intent of Congress.

Respectfully submitted,

DELMARVA POWER & LIGHT COMPANY

Bv:

Dale G. Stoodley Joanne M. Scanlon

Delmarva Power & Light Company 800 King Street, P.O. Box 231 Wilmington, Delaware 19899-0231

November 1, 1996

CERTIFICATE OF SERVICE

I, Joanne M. Scanlon, hereby certify that the foregoing Reply To The Opposition Of The Association For Local Telecommunications Services was served on November 1, 1996 on the following persons by U.S. mail, postage prepaid.

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